

KEN WALTERS, et al, No C-04-5084 VRW
Plaintiffs, ORDER
v
WORLD SWEEPING, INC,
Defendant.

Plaintiffs, which are various employee trust funds and their respective trustees, brought this ERISA action on December 1, 2004, alleging that defendant World Sweeping, Inc, violated a collective bargaining agreement ("CBA") and various trust agreements (Doc ##19, Ex B; 22) by not paying fringe benefit contributions to the trust funds and not submitting to an audit. Doc #1. Although served on December 15, 2004 (Doc #3), defendant never filed an answer or responsive pleading. Upon plaintiffs' motion, the clerk entered default on March 30, 2005. Doc #14.

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1 Plaintiffs now move the court for default judgment. Doc
2 #17. Plaintiffs have requested that defendant pay \$13,322.85 in
3 fringe benefit contributions and \$783.00 in liquidated damages,
4 plus interest. Doc ##1, 17. Plaintiffs have also requested
5 \$3,692.50 in attorneys' fees and \$234.50 in costs. Doc ##17-18.
6 Moreover, plaintiffs seek to enjoin defendant to submit to an audit
7 of its books and records, as required under the CBA and trust
8 agreements, and to pay plaintiffs the amount due under the audit,
9 plus interest. Doc #17. Plaintiffs also seek to enjoin defendant
10 permanently to submit all monthly contribution reports and payments
11 required under the CBA and trust agreements. Id. Finally,
12 plaintiffs request an accounting between plaintiffs and defendant.
13 Id.

14 Plaintiffs' declarations and supporting exhibits (Doc
15 ##12, 19, 22) demonstrate that they are entitled to default
16 judgment pursuant to FRCP 55(b) for their claims under 29 USC §§
17 1001, et seq. Plaintiffs also have provided sufficient evidence to
18 support their requests for attorneys' fees and costs, both of which
19 appear to be reasonable. Doc #18. But aside from a self-serving
20 statement (Doc #19 at 4:3-4), plaintiffs have not provided any
21 evidence of the amount of fringe benefit contributions, liquidated
22 damages and interest that defendant owes plaintiffs. Hence, the
23 court has no basis to determine the amount of damages, if any, to
24 which plaintiffs are entitled.

25 Accordingly, the court: (1) GRANTS plaintiffs' motion
26 for default judgment; (2) ORDERS defendant to pay plaintiffs
27 \$3,692.50 in attorneys' fees and \$234.50 in costs; (3) ENJOINS
28 defendant to submit to an audit of its books and records, as

1 required by the CBA and trust agreements, and to pay the amount due
2 under the audit, plus interest; (4) PERMANENTLY ENJOINS defendant
3 to submit all monthly contribution reports and payments required
4 under the CBA and trust agreements and (5) ORDERS defendant to
5 provide plaintiffs with an accounting of defendant's transactions
6 with plaintiffs. Moreover, pursuant to 28 USC § 636(b)(1)(A) and
7 FRCP 72(a), IT IS HEREBY ORDERED that this case be referred to the
8 chief magistrate judge or his designee to conduct such proceedings,
9 including evidentiary hearings, as necessary and appropriate to
10 determine the amount, if any, that defendant owes plaintiffs for
11 fringe benefit contributions, liquidated damages and interest.

12 The magistrate judge shall make a report and
13 recommendation concerning said amount within sixty days of the
14 entry of this order unless the time is extended upon application of
15 the magistrate judge. Counsel will be advised of the date, time
16 and place of appearance by notice from the assigned magistrate
17 judge.

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19 IT IS SO ORDERED.

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22 VAUGHN R WALKER

23 United States District Chief Judge
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